IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.4624 OF 1992.

Erach Sethna & Anr. : Petitioners.

versus

Garcia Catherine Bhiladwala

and anr. : Respondents.

Mr.Zubin Behrankandin with Mrs.Ferzana Behrankandin i/by M/s.FZB & Associates for the petitioners.

None for the respondents.

CORAM : D.G.DESHPANDE, J.

DATED : September 21, 2006.

ORAL ORDER

1. Heard advocate for the petitioners. This matter was on board on 15th September 2006. Advocate for the petitioner was present but nobody was present for the respondents. But looking to the issue involved, it was kept yesterday i.e. on 20th September 2006.

Yesterday also nobody was appeared for the respondents. Hence it was kept today. Today also nobody is present for the respondents. Therefore, I heard advocate for the petitioners.

2. Short issue is involved in this matter. The petitioner is the tenant. Eviction proceedings were started against her by the landlady on three grounds i.e. 1] bonafide occupation; 2] change of user and; 3] non payment of rent. The trial Court rejected the claim of the landlady/respondent and dismissed her suit. The landlady then preferred an appeal. That appeal was allowed only on the ground of bonafide occupation and hence this writ petition.

3. The advocate for the petitioners pointed out that during pendency of the petition, they came to know that the respondent/landlady had acquired two flats. Therefore, they filed an affidavit to that effect. Reply was filed by the landlady/respondent on 14.12.2001 and in the reply, after giving background of the facts under which she compelled to purchase two flats, the landlady admitted that she had purchased two flats A/21 and A/22 at Kalyaninagar, Yerwada,

Pune.

4. The advocate for the petitioners, therefore urged, with reference to this admission of the landlady/respondent, and as has been held by the Supreme Court in the matter of **Pasupuleti Venkateswarlu v/s. Motor & General Traders,** reported in **AIR 1975 SC 1409,** that the court can and should take note of the subsequent facts and I quote the following portion of the aforesaid judgment of Supreme Court :-

> "We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the court can, and in many cases must, take cautious cognizance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed. On both occasions, the High Court, in revision, correctly took this view. The later recovery of another accommodation by the landlord, during the pendency of the case, has as

> the High Court twice pointed out, a material bearing on the right to evict, in view of the inhibition written into S.10(3)(iii) itself. We are not disposed to disturb this approach in law or finding of fact."

5. The advocate for the petitioners also relied upon another judgment of the Supreme Court in the case of **M/s.Variety Emporium v/z. V.R.M.Mohd. Ibrahim Naina** reported in **AIR 1985 SC 207** wherein similar view has been taken by the Supreme Court. In that case the Supreme Court held thus :-

> "In a suit for eviction on the ground of bonafide requirement of premises by landlord the subsequent events ought to be taken into account for the purpose of findings out whether the landlord still required the premises in possession of the tenant. In appropriate cases, the court must have regard to events as they present themselves at the time when it is hearing the proceeding before it and mould the relief in the light of those

events."

The advocate for the petitioners also stated that there are two more judgments of the Supreme Court and two more judgments of this Court wherein same view has been taken. He also submitted that the petitioners have deposited the rent till 2006 in the trial Court. From the aforesaid judgments of the Supreme Court, it is clear that the court can take cognizance of the subsequent developments and, if the District Court allowed the application of the landlady on the ground of bonafide occupation, then admittedly and obviously, after having purchased two flats, as stated above, and having admitted that fact in the affidavit-in-reply, need for bonafide occupation has ceased to exist as on the date of decree of the District Court which was passed on 22nd September 1992. Therefore, this petition is allowed to that extent. The judgment and decree of the appellate Court dated 22nd September 1992 is set aside and quashed. The application of the landlady/respondent on the ground of bonafide occupation is dismissed. No order as to costs.

[D.G.DESHPANDE, J.]